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W.P(MD)No.10967 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on
04.08.2022

Orders pronounced on
17.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.10967 of 2012

and

M.P(MD)Nos.1 of 2012 & 1 of 2013

Sundaram Textiles Limited,
Nambi Nagar - Nanguneri Post,
Tirunelveli District,
Represented by its Vice Chairman,
Soumini Ramesh.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli,
Tirunelveli District.

2.The Labour Officer,
Tirunelveli,
Tirunelveli District.

3.S.Ganesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the records in relating to the Award, dated 22.03.2012 passed by the first respondent in I.D.No.28 of 2010 published on 09.05.2012 and to quash the same.



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For Petitioner : Mr.P.Chandra Bose
For R - 2 : No appearance
For R - 3 : Mr.D.Saravanan

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the award, dated 22.03.2012 passed by the first respondent in I.D.No.28 of 2010.

2. The brief facts leading to the filing of this Writ Petition are as follows:-

2.1. The third respondent filed a petition before the Labour Officer, Tirunelveli, under Section 2A of the Industrial Disputes Act, 1947, claiming that he was transferred to Ilkall, Karnataka State. This transfer was due to the fact that the third respondent raised the issue regarding the death of one S.Muthuselvi, while she was working in the Mill, cover up attempts made to conceal the death as suicide, non-payment of compensation for her death, non-payment of over time salary for the workers working for more than 8 hours etc. The transfer of third respondent to Ilkall, Karnataka State, an alien place, amounts to termination of the third respondent's



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service. The third respondent's representation, dated 24.02.2009 against the transfer, was not considered. Therefore, he filed the petition.

2.2. The petitioner Mill resisted the third respondent's claim claiming that this petition is not maintainable either under Section 2A of the Industrial Disputes Act, 1947 or under Section 2(k) of the Industrial Disputes Act, 1947. After enquiry, the Labour Officer, filed a failure report for the reason that the conciliation efforts did not succeed. Then the third respondent filed a petition in I.D.No.28 of 2010 before the Labour Court, Tirunelveli, under Section 2(A)(2) of the Industrial Disputes Act, 1947, seeking for the relief of reinstatement, continuity of service, backwages and other benefits. The petitioner filed the written statement. The Labour Court, on going through the oral and documentary evidence produced, allowed the petition, set aside the transfer order issued to the third respondent and directed the petitioner to reinstate the third respondent with continuity of service, backwages and other benefits. Challenging the award passed by the first respondent in I.D.No.28 of 2010, this Writ Petition is filed.



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3. Learned counsel appearing for the petitioner submitted that the petitioner Mill is procuring cotton from various places like Guntur, Adilabad in Andhra Pradesh, Karnataka and Gujarat States. It has its yarn Depots in various States. It came to know that procured cotton was of an inferior quality and there was quality variation, shade variation in cotton. Therefore, the petitioner Mill decided to upgrade the yarn agent offices and cotton procurement centers to the level of the Unit office / Branch office. Six employees were selected and transferred to agent offices / Depot offices of other States for the reason that the third respondent got expertise in Yarn and he can easily find out the defects and help in avoiding the procurement of inferior cotton. The third respondent has to work at the place of his posting. The term "Mill" or "Company" or "Establishment" means Sundaram Textiles Limited and includes its Textile Mills, Branches, Departments, if any, depots, Sales Offices, Administrative Office, premises or shop floor or godowns, stores and such other premises belonging to or on over which Sundaram Textiles Limited has control or management by any of them is at present existing or that may be established in future. Therefore, the third respondent cannot refuse to work at the transferred place. Even when a specific issue is raised that the petition filed under Section 2(A) of the Industrial Disputes Act, 1947 is not



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maintainable, there is no finding given by the Labour Court to that effect. The motive attributed for the transfer is not true for the reason that all these incidents alleged by the third respondent had happened only subsequent to his transfer. Learned Judge, Labour Court, Tirunelveli, found that the reasons stated by the third respondent cannot be accepted. However, it proceeded to set aside the order of transfer on the ground that the third respondent was transferred to a place, local language of that place is not known to the third respondent and thus, it is a motivated transfer required to be set aside. Subsequent to the award passed by the Labour Court, the petitioner sent a letter, dated 25.07.2012 to the third respondent requesting him to join in the place of posting as mentioned in the letter. However, third respondent refused to join in the place, rather sent a letter, dated 27.07.2012 requesting that only if every relief granted by the Labour Court is granted, he would join. It is the third respondent, who has not taken the offer of reinstatement and therefore, third respondent is not entitled for the relief of reinstatement and other reliefs.

4. In reply, learned counsel appearing for the third respondent submitted that transferring a worker to another State, the language of which is not known to the workman is nothing but a punitive



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transfer amounting to termination of service. Without knowing the local language, the third respondent would not be in a position to interact with the people and help procuring good yarn. It is obvious that the third respondent was transferred only for the reason that he along with certain other workers raised several issues mentioned earlier. To suppress those issues and to punish the third respondent and other workers, they were transferred out of the State of Tamil Nadu, it is a punishment and it amounts to unfair labour practice. The Labour Court rightly decided the issue in favour of the third respondent and passed the award. Even after the award passed by the Labour Court, the petitioner has not come forward to give an appointment to the third respondent at the same place and in the same post. It gave posting to some other place, again as a punishment and with an intention to harass the third respondent. The third respondent preferred to join duty subject to settling all his claims. Till now, the claim of the third respondent is not settled. The third respondent filed a claim petition in C.P.No.38 of 2012 and it is pending. This Writ Petition has no merits and it is liable to be dismissed.

5. Considered the rival submissions and perused the records.



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6. As per Clause 2(b) of the Certified Standing Order of Sundaram Textiles Limited, the term "Mill" or "Company" or "Establishment" means Sundaram Textiles Limited and includes its Textile Mills, Branches, Departments, if any, depots, Sales Offices, Administrative Office, premises or shop floor or godowns, stores and such other premises belonging to or on over which Sundaram Textiles Limited has control or management by any of them is at present existing or that may be established in future.

7. The claim of the petitioner is that a workman can be transferred to any of these places for better functioning of the Mill or Company or Establishment. As stated already, the petitioner Mill has been procuring cotton from various places like Guntur, Adilabad in Andhra Pradesh, Karnataka and Gujarat States and it has yarn depots in various States. However, the cotton procured was of an inferior quality. The petitioner Mill decided to depute an experienced and a person of expertise in identifying the good cotton to the cotton procurement centres and it decided to upgrade the level of agent offices into Branch Offices. Accordingly, an evaluation was conducted among the workers. The third respondent was one among 10 employees, participated in the evaluation and cleared the



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evaluation with good marks. Therefore, he was transferred to Ilkall, Karnataka State.

8. Clause 26 of the Certified Standing Order of Sundaram Textiles Limited deals with transfer of worker, which reads as follows:-

"Workman may be transferred at the direction of the company from one establishment to another establishment of the company, from one department to another or from job to another or from one section to another as operating/administrative necessity may require. Such transfer will not adversely affect the pay, grade, continuity or other conditions of service.

Certified that the draft modification under Clause No.26 in the Certified Standing Orders of Sundaram Textiles Limited, Nambinagar, Nanguneri - 627 108 is certified and authenticated by my signature and seal under Section 5(3) of the Act read with Rule 60 of the Tamil Nadu Industrial Employment (Standing Orders) Rules 1947, on this day the 20th June, 1991."

Thus, it is claimed by the petitioner that it is not open to the third respondent to challenge the transfer order.



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9. Reading of the Award of the Labour Court shows that the third respondent had raised / imputed motive for the transfer. They are:-

(i) The efforts taken by the third respondent, along with others, to get compensation to the deceased female worker S.Muthuselvi.

(ii) Steps taken for regularizing the service of the third respondent and others and for making them permanent workers.

(iii) Joining the Labour Rights Movement - AICCTI from TVS Trade Union.

(iv) Non-payment of overtime pay.

10. However, the Labour Court found that these reasons had not been substantiated by the third respondent with acceptable evidence. It was specifically observed that the agitation in connection with the death of S.Muthuselvi had taken place only after the transfer of the third respondent. There is no material produced to show that when the third respondent joined Labour Rights



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Movement - AICCTI. No details given as to the period during which overtime pay was not given. Learned Judge, Labour Court, Tirunelveli has not accepted the aforesaid reasons attributed by the third respondent for his transfer to Ilkall, Karnataka State. However, the learned Judge, Labour Court accepted one more reason stated by the third respondent ie., "the third respondent was transferred to Ilkall, Karnataka State; he did not know the local language of Karnataka; he is an illiterate and he did not know how to read and write". There is no denial of the fact that the third respondent did not know to read and write. The third respondent is a worker banking on his physical labour; he is working in the Southernmost part of Tamil Nadu; he did not know the local language of the State where he was transferred; when he did not know the local language of Karnataka, it is not possible for him to converse with the traders for procuring cotton. Therefore, his transfer to Karnataka would not do good either to the workman or to the Management. In this view of the matter, learned Judge, Labour Court found that this transfer was not for genuine reasons and it would cause hardship to the workman and to the Management.

11. The Labour Court also found that though the petitioner claimed that it has decided to upgrade the yarn agent offices and



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cotton procurement centres to the level of the unit office or Branch office, till the transfer of the third respondent to Ilkall, Karnataka State, it appears that the yarn agent office and cotton procurement centre was not upgraded to the level of unit office or branch office. No record has been produced in this regard. Therefore, it was found that the transfer is against law. Certified Standing Order of Sundaram Textiles Limited, Clause 26 reads that, "workmen may be transferred at the discretion of the company from one establishment to another establishment of the company, from one department to another or from job to another or from section to another as operating / administrative necessity may require." There is no material produced to show that the yarn agent office / cotton procurement centre in the place where the third respondent transferred was upgraded as Unit office or Branch office. Therefore, the learned Judge, Labour Court found that the transfer is against law.

12. This Court finds that the Award of the learned Judge, Labour Court is well considered, and finds no reason to take a different view of the matter with regard to the finding that the transfer of the third respondent to Ilkall, Karnataka State is against law.



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13. One more contention raised by the learned counsel appearing for the petitioner is that the petition filed under Section 2(A) of the Industrial Disputes Act, 1947 is not maintainable and the petition ought to have been filed under Section 2(k) of the Industrial Disputes Act, 1947. However, this issue was also considered by the Labour Court and it found relying on the Judgment reported in **2009 (2) L.L.N 539 [Management of Holy Faith International (Private) Limited, Chennai Vs. Presiding Officer, First Additional Labour Court, Chennai]**, that when a workman of a physical labour is transferred to an alien place, whose language is not known to him, would amount to termination of his service. This Judgment squarely applies to the facts of this case. The third respondent was transferred to Ilkall, Karnataka State whose language is not known to the third respondent. The third respondent is a workman relying on his physical labour. Therefore, his transfer would certainly amount to termination of his service and therefore, the petition filed by the third respondent under Section 2(A) of the Industrial Disputes Act, 1947 is maintainable. In the considered view of this Court, this finding is on the basis of the proper appreciation of evidence and correct application of law and therefore, this Court finds no interference is needed.



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14. In fine, this Court finds no reason to interfere with the award of the learned Judge, Labour Court in setting aside the transfer order, dated 17.02.2009 given to the third respondent, ordering reinstatement with continuity of service, backwages and other benefits.

15. Though this Court confirms the award passed by the learned Judge, Labour Court, it is seen from the letter, dated 25.07.2012 that the petitioner was taking steps to file an appeal against the award. It also reads that three years had lapsed since the third respondent not reported to work and that some other worker had been appointed in the place of the third respondent and there is no vacancy in the Section where the third respondent worked and the third respondent was given posting at M/s.Sundaram Textiles Limited - Private - Unit, Melur Road, Therkuthuru, Melur Taluk. This transfer is in accordance with the Standing Orders of the petitioner. Therefore, the third respondent was directed to join in his new place within three days from the date of receipt of a copy of that order.

16. It appears that the third respondent did not join duty as per this letter. In fact, he sent a letter, dated 27.07.2012 referring



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to the letter sent by the Management, dated 25.07.2012 and stated that he would join duty only if the award passed in I.D.No.28 of 2010 is implemented in full. In this regard, learned counsel appearing for the petitioner produced the order passed by the Punjab - Haryana High Court in **CWP.No.19747 of 2016, dated 16.02.2018 [M/s.N.K.Industries Vs. Presiding Officer and another]** and submitted that the third respondent should not have refused the offer of re-employment. Therefore, the third respondent is not entitled to backwages. It is observed in the order as follows:-

"7.Respondent - workman could have accepted the offer made by the management relating to reinstatement. If he is still aggrieved by the non-payment of backwages, he had remedy before the appropriate forum insofar as seeking backwages from the date of termination till reinstatement. Therefore, respondent-workman is not entitled for backwages. Bombay High Court in the case of Sonal Garments Vs. Trimbak Shankar Karve; 2003 (1) SCT 427 held as under:

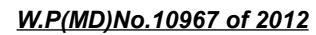
"4.However, as the offer of petitioner to reinstate the respondent was not accepted, he is not entitled to the relief of reinstatement and any backwages at all. His conduct lends support to the version of the employer that he had abandoned the employment and that he never



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came back to report for duty and that it was not a case of termination by the petitioner-employer. Whenever the employer offers to reinstate the workman at any stage of the dispute or proceedings and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any backwages from the date of such offer, conditional or unconditional. He must first accept the offer and get reinstated in employment and, therefore, continue to contest for the relief of backwages, if any. In the present case there was an unconditional offer of reinstatement made by the employer in the written statement itself but it was not accepted by the workman. Therefore, as stated by me hereinbefore, he is not entitled to get reinstatement with full backwages at all."

17. In the case before hand, the third respondent was offered employment after the passing of the award, though at a different place, he should not have refused to join on the condition that only after the award is implemented in full, he would join. He should have joined at the place of posting on re-employment and then agitated his further claim in the manner known to law. Therefore, in the considered view of this Court, the third respondent is not



18. In the result,

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

17.08.2022
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Index :Yes / No
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Note:-

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G.CHANDRASEKHARAN, J.

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To

- 1.The Presiding Officer,
Labour Court,
Tirunelveli,
Tirunelveli District.
- 2.The Labour Officer,
Tirunelveli,
Tirunelveli District.

Order made in
W.P(MD)No.10967 of 2012

17.08.2022
(3/4)